

To: Walker, Johnny (USADC)[Johnny.Walker@usdoj.gov]
Cc: Miller, Kevin[Miller.Kevin@epa.gov]; White, Elizabeth[white.elizabeth@epa.gov]
From: Hammitt, Jennifer
Sent: Mon 10/30/2017 7:44:30 PM
Subject: FW: American Oversight v. EPA, 17-1227, Follow-Up on Documents

Hi Johnny – please see below for our responses. Thanks.

Ex. 5 - Deliberative Process/ACP/AWP

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Ex. 5 - Deliberative Process/ACP/AWP

Jennifer Hammitt

Attorney-Advisor, Information Law Practice Group

Office of General Counsel, General Law Office

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW, MC-2377A

Washington, DC 20460

(202) 564-5097

From: Walker, Johnny (USADC) [mailto:Johnny.Walker@usdoj.gov]

Sent: Monday, October 30, 2017 11:53 AM

To: Hammitt, Jennifer <Hammitt.Jennifer@epa.gov>

Subject: RE: American Oversight v. EPA, 17-1227, Follow-Up on Documents

Jennifer,

Ex. 5 - Deliberative Process/ACP/AWP

Johnny

From: Walker, Johnny (USADC)

Sent: Friday, October 27, 2017 5:01 PM

To: 'Hammitt, Jennifer' <Hammitt.Jennifer@epa.gov>

Subject: RE: American Oversight v. EPA, 17-1227, Follow-Up on Documents

Ex. 5 - Deliberative Process/ACP/AWP

Ex. 5 - Deliberative Process/ACP/AWP

From: Hammitt, Jennifer [<mailto:Hammitt.Jennifer@epa.gov>]
Sent: Friday, October 27, 2017 2:14 PM
To: Walker, Johnny (USADC) <JWalker3@usa.doj.gov>
Subject: FW: American Oversight v. EPA, 17-1227, Follow-Up on Documents

Ex. 5 - Deliberative Process/ACP/AWP

Jennifer Hammitt

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From: Hammitt, Jennifer
Sent: Friday, October 27, 2017 2:13 PM
To: White, Elizabeth <white.elizabeth@epa.gov>; Miller, Kevin <miller.kevin@epa.gov>
Cc: Hope, Brian <Hope.Brian@epa.gov>; Farren, Victor <Farren.Victor@epa.gov>
Subject: RE: American Oversight v. EPA, 17-1227, Follow-Up on Documents

Beth, Kevin, all –

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Washington, DC 20460

(202) 564-5097

From: Walker, Johnny (USADC) [<mailto:Johnny.Walker@usdoj.gov>]

Sent: Friday, October 20, 2017 9:41 AM

To: Hammitt, Jennifer <Hammitt.Jennifer@epa.gov>

Cc: Miller, Kevin <Miller.Kevin@epa.gov>

Subject: RE: American Oversight v. EPA, 17-1227, Follow-Up on Documents

Ex. 5 - Deliberative Process/ACP/AWP

From: Hammitt, Jennifer [<mailto:Hammitt.Jennifer@epa.gov>]

Sent: Friday, October 20, 2017 9:36 AM

To: Walker, Johnny (USADC) <JWalker3@usa.doj.gov>

Cc: Miller, Kevin <Miller.Kevin@epa.gov>

Subject: RE: American Oversight v. EPA, 17-1227, Follow-Up on Documents

Ex. 5 - Deliberative Process/ACP/AWP

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Jennifer Hammitt

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Washington, DC 20460

(202) 564-5097

From: Walker, Johnny (USADC) [<mailto:Johnny.Walker@usdoj.gov>]

Sent: Thursday, October 19, 2017 5:31 PM

To: Hammitt, Jennifer <Hammitt.Jennifer@epa.gov>

Subject: FW: American Oversight v. EPA, 17-1227, Follow-Up on Documents

Hi Jennifer,

Ex. 5 - Deliberative Process/ACP/AWP

Thanks.

Johnny

From: Sara Creighton [<mailto:sara.creighton@americanoversight.org>]

Sent: Thursday, October 19, 2017 4:51 PM

To: Walker, Johnny (USADC) <JWalker3@usa.doj.gov>

Subject: American Oversight v. EPA, 17-1227, Follow-Up on Documents

Johnny,

Thank you for completing production in this case. We have a few follow-up questions:

1) First, could you please provide us some more information about what the agency did to search for records responsive to our request? In particular, we would like to know (a) what custodians' files were searched, (b) what locations were searched (only email, or also other servers or hard copy locations?); (c) what search terms or methods were used to locate relevant files, and (d) what the date range for the search was (presumably based on the date the search was conducted).

2) Second, could you provide us with more information about the basis for the (b)(6) redactions on the pages listed below? For some, it seems like the redacted portions likely just reflect personal information (weekend plans, etc.), but we would like confirmation of the agency's position about what is personal in those emails. For others, it appears that the full name/email for certain individuals was redacted, and we would like to understand the agency's position about why they believe that merely revealing those individuals' participation in these communications would be an unwarranted invasion of their privacy.

- EPA-HQ-2017-006057-0000187

- EPA-HQ-2017-006057-0000188

- EPA-HQ-2017-006057-0000192

- EPA-HQ-2017-006057-0000197

- EPA-HQ-2017-006057-0000335

- EPA-HQ-2017-006057-0000336

- EPA-HQ-2017-006057-0000338

- EPA-HQ-2017-006057-0000383

- EPA-HQ-2017-006057-0000386

- EPA-HQ-2017-006057-0000391

3) Third, we have questions about the four documents that were withheld from the 10/13 production, for which the agency has asserted Exemptions 6 and 4. It is not clear to us from the index provided with the production why an email from an executive at Dow Chemical to an EPA political appointee could possibly be withheld under Exemption 6. Given the conclusion that this was an agency record that was responsive to the request, and that one attachment to it was withheld under Exemption 4, we don't think the records could be purely personal in nature, and don't see how else they might qualify under Exemption 6.

4) Finally, we have questions about the agency's decision to withhold the decision memorandum requested in part (5) of our FOIA request pursuant to Exemption 5. Assuming that it is, in fact, a memorandum reflecting the final decision made by the agency, and reflects the agency's reason therefore, it should no longer be considered predecisional. *See Judicial Watch Inc. v. HHS*, 27 F. Supp. 2d 240, 245 (D.D.C. 1998) (noting that "deliberative process privilege does not protect documents that merely state or explain agency decisions"). At a minimum, even if parts of the memorandum discuss other positions that the agency ultimately did not take, those parts of the memorandum should simply be redacted, and the remaining, non-exempt materials should be segregated and produced.

We would appreciate any additional information you can provide us in response to these questions. We very much hope to avoid summary judgment briefing by working with the agency on these issues if at all possible.

Best,

Sara Creighton